



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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To: Chair Remke, Commissioners Audero, Hatch, and Hayward
From: Jack Woodside, General Counsel; Sukhi Brar, Senior Commission Counsel
Subject: Requested Amendments to Regulation 18531.5 and Regulation 18535
Date: October 9, 2017

I. Issue

The Commission has been asked to make further regulatory amendments to address issues that, according to public comment, have been presented by the Commission's adoption of *In re Rios* Opinion, No. O-17-001. (See Richard Rios September 22, 2017 Email Re: Proposed Regulation in Response to *In re Rios* Opinion (O-17-001).)

II. Background

An Interested Persons Meeting was held on September 26, 2017, regarding amendments to Regulation 18535. The noticed amendments to Regulation 18535 are intended to codify the Commission's recent *In re Rios* Opinion, No. O-17-001. The *In re Rios* Opinion specifically concerns contributions made to and received by candidates that are the subject of a recall and their committees to oppose the recall. Specifically, the Opinion provides that Sections 85305 and 85315 require that there be no limit on contributions from state candidates to recall committees controlled by another state candidate to oppose the recall of that state candidate. The proposed amendments to Regulation 18535 have been noticed for this month's agenda.

Prior to the Interested Persons Meeting, Richard Rios, on behalf of Olson Hagel & Fishburn LLP, submitted public comment seeking the following three amendments in addition to the noticed amendments to Regulation 18535:

- The first proposal is a minor amendment to Regulation 18531.5 to help clarify the *In re Rios* Opinion by providing that in addition to contributions accepted by the target of a recall, the limits do not apply to contributions “made to” the targeted officer. Because the proposed amendment is consistent with and within the scope of the *In re Rios* Opinion, Regulation 18531.5 has been noticed for amendment with the Office of Administrative Law and that regulation can be presented at the November 2017 meeting for consideration.
- The two additional requests are that the Commission further amend Regulation 18535 so that it expressly exempts candidate controlled legal defense funds and candidate controlled ballot measure committees from the contribution limits in Section 85305. However, these requests

are outside the scope of the *In re Rios* Opinion because that opinion focuses solely on committees controlled by a state candidate that is opposing his or her recall and the limits on other state candidates contributing to that type of committee.

Based on the Commission's guidance, possible options as to the request to further amend Regulation 18535 include directing staff to: prepare a memorandum briefing the legal issues related to the proposed amendments; notice the proposed amendments for the December Commission meeting, with an Interested Persons meeting to be scheduled prior to that meeting; or take no action with respect to the proposed amendments.

III. Conclusion

Staff seeks guidance from the Commission on whether to proceed with the requests to:
(1) make a minor amendment to Regulation 18531.5 consistent with the *In re Rios* Opinion; and
(2) expressly exempt candidate controlled legal defense funds and candidate controlled ballot measure committees from the contribution limit in Section 85305.

Attachment:

Richard Rios September 22, 2017 Email